



NORTHWEST ENVIRONMENTAL DEFENSE CENTER
10015 SW Terwilliger Blvd, Portland, OR 97219
PHONE: 503.768.6673 WEB: nedc.org

September 27, 2019

RECEIVED ON:

ORC

SEP 30 2019

no CMS

EPA Region 10

Office of the Regional Administrator

Via Certified Mail – Return Receipt Requested

Managing Agent
Container Management Services, LLC
8435 NE Killingsworth St.
Portland, OR 97220

Re: Notice of Intent to File Suit under the Clean Water Act for Violations of the 1200-COLS and 1200-Z Permits at your Northeast Portland Facility

Dear Managing Agent,

The Northwest Environmental Defense Center (“NEDC”) hereby provides notice pursuant to Section 505 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereinafter “CWA” or “the Act”), 33 U.S.C. § 1365 *et. seq.*, of its intent to initiate suit against Container Management Services, LLC (hereinafter “CMS”) to enforce the Clean Water Act for the violations described in this letter. CMS’s facility, located at 10103 NE Marx St., Portland, OR 97220 (hereinafter “the Facility”) is currently covered under the National Pollutant Discharge Elimination System (“NPDES”) 1200-Z Permit, Permit Number 111066. Prior to August 1, 2017, the Facility was covered under the NPDES 1200-COLS Permit. CMS has violated these Permits and continues to violate the express terms of the 1200-Z Permit, which sets specific requirements that the Facility must follow to ensure the protection of Oregon’s waters.

Unless CMS resolves its ongoing Permit violations to NEDC’s satisfaction, NEDC intends to file suit against CMS in U.S. District Court immediately following the expiration of the required sixty-day notice period. NEDC intends to seek injunctive relief and civil penalties in the amount of up to \$37,500 per day per each violation of the CWA that occurred before November 2, 2015, up to \$54,833 per day for all violations that occurred after that date, and for any additional, similar violations that NEDC may discover subsequently. If CMS has any information showing that one or more of the violations outlined in this notice did not occur or is stated incorrectly, please provide that information to NEDC immediately, specifying the violation in question.

I. BACKGROUND

A. Facility Background

CMS discharges stormwater from the Facility through a single outfall to Johnson Lake, and subsequently to the Columbia Slough. The Oregon Department of Environmental Quality (“DEQ”) currently authorizes this stormwater discharge by DEQ’s 1200-Z NPDES Permit, which took effect September 5, 2017 and was subsequently reissued on October 22, 2018 (hereinafter the “1200-Z Permit”). Prior to September 5, 2017, discharges from the Facility were covered under the 1200-COLS NPDES Permit (hereinafter the “1200-COLS Permit”). The 1200-Z Permit is substantially similar to the 1200-COLS Permit, and NEDC alleges ongoing violations of the CWA that began during coverage under the 1200-COLS Permit and are continuing through the present. These Permits authorize CMS to discharge stormwater associated with industrial activity, provided the discharges are “in conformance with all the requirements, limitations, and conditions set forth” in the relevant permit. 1200-Z Permit at 2; 1200-COLS Permit at 2.

B. The 1200-Z NPDES Permitting Scheme

Congress enacted the Clean Water Act in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). In doing so, Congress declared a national goal of eliminating discharges of pollutants to navigable waters by 1985. Section 301 of the CWA prohibits the discharge of pollutants except, *inter alia*, in accordance with the terms of a NPDES permit issued pursuant to section 402 of the Act.

The State of Oregon implements a federally approved NPDES permit program administered by the Oregon Department of Environmental Quality (“ODEQ”). ODEQ periodically issues a general NPDES permit authorizing discharges of stormwater associated with industrial activity in Oregon. For facilities that obtain coverage under it, ODEQ’s current General Stormwater Discharge Permit Number 1200-Z authorizes discharges of industrial stormwater, provided the discharges are in compliance with the terms and conditions of the permit. Any noncompliance with the permit “constitutes a violation of...the Clean Water Act...and is grounds for enforcement action...” *See* 1200-Z Permit Schedules A.12.a and F.A1.a.

The 1200-Z Permit establishes specific requirements that the permit registrant must follow to ensure the protection of Oregon’s waters. To begin with, the permit registrant must properly prepare, implement, and keep its Stormwater Pollution Control Plan (“SWPCP”) updated and current. There are a number of requirements that must be included in a SWPCP, including a site description, adequate site controls that eliminate or minimize exposure of pollutants to stormwater, and recordkeeping, sampling, and reporting procedures. *See* 1200-Z Permit Sch. A.7.

A SWPCP’s effectiveness is determined by comparing stormwater monitoring results with Permit benchmarks. The benchmarks are numeric concentration levels set for certain

pollutants, which provide a standard that determines whether a facility's SWPCP is effectively reducing or eliminating stormwater pollution in compliance with the CWA's Technology Based Effluent Limit ("TBEL") standards and Water Quality Based Effluent Limit ("WQBEL") standards. *Id.* Sch. A.9. If a benchmark is exceeded, the permittee must investigate the cause of the exceedance, review the SWPCP, and determine what corrective actions must be taken to ensure future compliance with these standards. *Id.* Sch. A.10.a. Visual monitoring for floating solids and oil and grease sheen provide an additional assurance that the SWPCP is effective. *Id.* Sch. B.7.a.vii.

In no event may anyone, permitted or unpermitted, cause or contribute to a violation of water quality standards. 1200-COLS Permit, Sch. A.5; 1200-Z Permit, Sch. A.4; 33 U.S.C. § 1311.

II. VIOLATIONS OF THE CLEAN WATER ACT

The Clean Water Act's citizen suit provision authorizes any citizen to file a federal lawsuit against any person (including a corporation or other business entity) "alleged to be in violation an effluent standard or limitation" under the Act, which includes by definition "a permit or condition thereof issued under" the Act's NPDES permit program. 33 U.S.C. § 1365(a)(1), (f). It is black-letter law that all of the terms and conditions of a state-issued NPDES permit, such as the 1200-COLS and 1200-Z permits, are enforceable via federal citizen suits. *See, e.g., Nw. Env'tl. Advocates v. City of Portland*, 56 F.3d 979, 986 (9th Cir. 1995); *Or. State Pub. Interest Research Grp., Inc. v. Pac. Coast Seafoods Co.*, 361 F. Supp. 2d 1232, 1236, 1238 (D. Or. 2005).

CMS has violated and is violating Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342, and is in violation of an "effluent standard or limitation" under the Clean Water Act, *id.* § 1365(a)(1), by discharging pollutants and stormwater associated with industrial activity from the Facility in violation of the terms and conditions of the 1200-COLS and/or the 1200-Z permits. This letter provides sixty days' notice of NEDC's intent to sue over the following specific violations at the facility.

A. Violations of the Narrative, Technology-Based Effluent Limits and the Control Measures Required to Meet Those Limits.

Schedule A.1 of the 1200-Z and 1200-COLS Permits requires CMS to meet the Permit's listed narrative technology-based effluent limits. The narrative technology-based effluent limits in Schedule A.1 of the 1200-Z Permit require CMS, among other things, to "minimize exposure of manufacturing, processing, [and] material storage areas...to rain, snow, snowmelt and runoff" (Schedule A.1.a); to employ measures to eliminate or minimize oil and grease contamination of stormwater discharges (Schedule A.1.b); to "recycle or properly dispose of wastes to eliminate exposure of pollutants to stormwater" (Schedule A.1.c); to "stabilize exposed areas and contain runoff using structural and nonstructural controls to minimize erosion of soil at the site and sedimentation" (Schedule A.1.d); to "employ screens, booms, settling ponds, or other methods to eliminate or minimize waste, garbage and floatable debris in stormwater discharges and ensure that this debris is not discharged to receiving waters" (Schedule A.1.e); "to minimize generation

of dust and off-site tracking of raw, final or waste materials” (Schedule A.1.f); to “routinely clean all exposed areas that may contribute pollutants to stormwater using such measures as sweeping at regular intervals, litter pick-up, keeping materials orderly and labeled, prompt clean-up of spills and leaks, proper maintenance of vehicles and stowing materials in appropriate containers” (Schedule A.1.g); to minimize the potential for spills and develop spill prevention and response plans (Schedule A.1.h); to regularly inspect, clean, maintain and repair all equipment, systems, areas, and stormwater control measures (Schedule A.1.i); and to develop and maintain an employee education program on the components and goals of the SWPCP (Schedule A.1.j).

Additionally, Schedule A.3.a of the 1200-Z and 1200-COLS Permits requires CMS “to select, design, install, implement and maintain control measures...to meet the narrative and numeric technology based effluent limits in Schedule A.1 [and] A.2...of this permit and [to] describe[] these measures...in the SWPCP.” Schedule A.6.d of the 1200-Z Permit (and Sch. A.6.c of the 1200-COLS Permit) then requires CMS to implement the SWPCP. Perhaps most importantly, Schedule A.3.b of the 1200-Z Permit requires CMS to “...reduce or eliminate pollutants to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practice.”

CMS has violated and continues to violate these NPDES permit conditions by failing to meet the narrative technology based effluent limits in Schedule A.1 of the 1200-Z Permit; by failing to select, design, install, implement, and maintain control measures that meet the narrative technology based effluent limits in Schedule A.1; by failing to describe such measures in its SWPCP; and by failing to fully implement its SWPCP. These violations are demonstrated by the fact that CMS has, and continues to, regularly exceed the pollutant benchmarks imposed by Schedule A.9 of the Current Permit. These violations have occurred each and every day for the past five years.

Schedule A.9 of the 1200-Z Permit explains that the benchmarks “are designed to assist the permit registrant in determining whether its site controls are effectively reducing pollutant concentrations in stormwater discharged from the site.” Schedule A.9 of the 1200-Z Permit establishes the following statewide benchmarks applicable to CMS: total copper 0.020 mg/L; total lead 0.060 mg/L; total zinc 0.24 mg/L; pH 5.5 – 8.5 S.U.; total suspended solids 30 mg/L; total oil and grease 10 mg/L; e. coli 406 counts/100 mL; and total phosphorous .16 mg/L.¹ In addition, CMS discharges to a water body that is not meeting water quality standards for various pollutants, including iron, and the 1200-Z Permit therefore requires CMS to monitor for this parameter and establishes a reference concentration for iron of 1.0 mg/L. CMS has repeatedly failed to meet these benchmarks, as indicated in Table 1 below:

¹ In the Prior Permit, the benchmark for total copper was 0.036 mg/L, and the benchmark for total suspended solids was 50 mg/L. All other benchmark concentrations are the same in both Permits.

| | Total Suspended Solids | Copper | Zinc | E.Coli | Phosphorous | Iron |
|--|------------------------------|----------------------|---------------------|----------------------------|-----------------|-------------------|
| Prior Permit Benchmarks | 50 mg/L | .036 mg/L | .24 mg/L | 406 count/100mL | .16 mg/L | 1 mg/L |
| 10/22/14 | 750 | 0 | 1 | 2420 | 2 | 21.8 |
| 12/04/14 | 1040 | 0.1 | 0.8 | 649 | 1.7 | - |
| 02/06/15 | 39 | 0 | 0.2 | 57 | 0.3 | 4.01 |
| 03/23/15 | 226 | 0 | 0.4 | 308 | 0.6 | 10.5 |
| Geo-Mean | 288 | .037 | .5 | 408 | .83 | |
| 11/02/15 | 5 | 0.0215 | 0.588 | 344 | 0.108 | 0.688 |
| 12/07/15 | 137 | 0.0152 | 0.508 | 548 | 0.358 | 5.06 |
| 01/29/16 | 42 | 0.0141 | 0.467 | 387 | 0.246 | 4.46 |
| 3/09/16 | 138 | 0.0247 | 0.77 | 613 | 0.5 | - |
| Geo-Mean | | | 0.572 | 460 | 0.263 | |
| 10/14/16 | 56 | 0.0164 | 0.664 | 1990 | 0.25 | 3.91 |
| 11/15/16 | 65 | 0.0259 | 1.05 | 2420 | 0.304 | - |
| 01/09/17 | 208 | 0.0232 | 0.406 | 308 | 0.576 | 8.81 |
| 02/08/17 | 94 | 0.0189 | 0.559 | 548 | 0.316 | - |
| Geo-Mean | 92 | | 0.631 | 950 | 0.343 | |
| Current Permit Benchmarks | 30 mg/L | .02 mg/L | .24 mg/L | 406 count/100mL | .16 mg/L | 1 mg/L |
| 10/19/17 | 56 | 0.0169 | 0.5 | 1050 | 0.282 | 3.74 |
| 11/15/17 | 96 | 0.0228 | 0.449 | 194 | 0.494 | 6.13 |
| 01/23/18 | 156 | 0.0287 | 0.602 | 517 | 0.52 | 12.6 |
| 03/13/18 | 42 | 0.0114 | 0.525 | 9.7 | 0.118 | - |
| Geo-Mean | 77 | | 0.52 | | 0.3 | 6.6 |
| 11/28/18 | 96 | 0.0225 | 0.547 | 192 | 0.428 | 6.13 |
| 12/18/18 | 85 | 0.0146 | 0.216 | 328 | 0.208 | 4.66 |
| 02/11/19 | 322 | 0.0404 | 0.705 | 1050 | 0.876 | 13.5 |
| 04/11/19 | 91 | 0.0295 | 0.836 | 921 | 0.486 | 9.6 |
| Geo-Mean | 124 | 0.025 | 0.51 | 407 | 0.49 | 7.8 |

Table 1: Discharge Monitoring Results Reported by CMS
Bold – result is over the Permit benchmark

The benchmark exceedances by CMS are ongoing and demonstrate that CMS's site controls are not effectively minimizing pollutants in stormwater discharged from the facility, and are not reducing or eliminating pollutants to the extent achievable in violation of 1200-Z Permit Schedule A.3.b. CMS can and must do more to reduce those pollutant loads, including revising its SWPCP and then implementing those revisions in a timely manner.

Indeed, for several of the pollutants at issue—including total suspended solids, copper, phosphorous, and iron—CMS has reported *increases* in pollutant loadings from one year to the next, and from one month to the next. As just one example, the geometric mean value for total suspended solids for the 2017-18 monitoring year was 77 mg/L, while the geometric mean value

for total suspended solids for the next year, 2018-19, was 124 mg/L. Similarly, reported concentrations of copper, e. coli, phosphorous, and iron in 2018-19 were all higher than their respective reported concentrations in the previous 2017-18 monitoring year. This further demonstrates that CMS could be, but is not, doing more to minimize and eliminate pollutants in its stormwater discharges, in violation of Schedule A.1, A.3.a, and A.3.b of the 1200-Z Permit.

CMS's failure to minimize pollutant loadings in its stormwater discharges also demonstrates that CMS has violated and is violating Schedule A.3.e of the 1200-Z Permit. Schedule A.3.e.i. of the 1200-Z Permit states: "If the permit registrant is failing to implement the control measures in the SWPCP, they must take corrective actions and implement the measures before the next storm event if practicable, unless otherwise approved by [the Oregon Department of Environmental Quality] or Agent." *See also* 1200-COLS Permit Sch. A.3.d.i. Additionally, Schedule A.3.f of the 1200-Z Permit states:

If modifications to the control measures are necessary to meet the technology-based effluent limits in this permit, the permit registrant must revise the SWPCP no later than 30 calendar days from completion of the modifications, unless otherwise approved by DEQ or agent. Permit registrant must implement the corrective actions before the next storm event if practicable or no later than 60 calendar days from discovering the violation, unless DEQ or agent approved a later date.

See also 1200-COLS Permit Sch. A.3.d.ii. A review of CMS's permit files with the Portland Bureau of Environmental Services shows that CMS has violated and is violating these requirements by failing to fully implement its SWPCP, and by failing to take corrective actions, including revision of its SWPCP and implementation of modified control measures, even though such corrective actions are necessary to meet the effluent limits in the permit. These violations have occurred each and every day over the past five years.

B. Violations of Water Quality Based Effluent Limitations

Schedule A.4.a of the 1200-Z Permit prohibits CMS from causing or contributing to a violation of instream water quality standards as established in Oregon Administrative Rules 340-041. CMS discharges to a water body identified as failing to meet the water quality standard for iron. As indicated in Table 1 above, discharges from CMS contain elevated levels of iron. CMS has violated and is violating Schedule A.4.a of the 1200-Z Permit by discharging stormwater that causes or contributes to violations of the water quality standard for iron in the receiving water. These violations have occurred each and every day over the past five years, on which there was 0.1 inch or more of precipitation, including on the following days when CMS collected a sample of its discharge that exceeded the reference concentration for iron: October 22, 2014; February 6, 2015; March 23, 2015; December 7, 2015; January 29, 2016; October 14, 2016; January 9, 2017; October 19, 2017; November 15, 2017; January 23, 2018; November 28, 2018; December 18, 2018; February 11, 2019; and April 11, 2019.

C. Violation of Inspection Requirements

Under Schedule B.7.a of the 1200-Z Permit, CMS is required to perform monthly inspections of “areas where industrial materials or activities are exposed to stormwater and areas where stormwater control measures, structures, catch basins, and treatment facilities are located.” These inspections are to include “visual observation for the presence of floating, suspended or settleable solids, color, odor, foam, visible oil sheen, or other obvious indicators of pollution in the stormwater discharge at all discharge point(s)…” 1200-Z Sch. B.7.a.vii. When these observations show evidence of such stormwater pollution, a Tier I corrective action report is required. *Id.* Sch. B.7.f. *See also* 1200-COLS Permit Sch. B.7.b.v (requiring in these instances creation of an inspection report that is kept on-site with a description of corrective action taken or to be taken to address the problem).

A January 5, 2017 Portland Bureau of Environmental Services (BES) inspection of the Facility indicated that CMS had violated this Permit requirement. BES noted in a letter the following day that despite the presence of suspended solids in an on-site swale, CMS had not documented a response to this problem. BES Letter (Daryl Houtman to Ricci Keller) (January 6, 2016).

Similarly, during a February 2019 inspection, a BES agent noted that CMS had not conducted or documented corrective actions in response to two separate visual observations of pollutants: a visual observation on May 18, 2018 indicating discoloration and oil sheen; and a visual observation on December 10, 2018 indicating the presence of suspended solids. BES Letter (Alexa Sebastian to Ricci Keller) (February 15, 2019).

Each day that CMS has failed to document a response or planned response to the visual observation of any pollutants identified in 1200-Z Permit Schedule B.7.a.vii is a violation of 1200-Z Permit Schedule B.7.f and 1200-COLS Permit Schedule B.7.b.v.

D. Corrective Action Violations

Schedule A.10 of the 1200-Z Permit requires CMS to undertake a Tier I Corrective Action Response on each instance where stormwater monitoring results exceed any of the permit’s benchmarks. If such action is triggered, the permit registrant must within 30 calendar days of obtaining the monitoring results: 1) Investigate the cause of the elevated pollutant levels; 2) Review the SWPCP and the selection, design, installation and implementation of control measures to ensure compliance with the permit, and evaluate whether any treatment measures have been properly installed, maintained and implemented; and (3) If the permit registrant determines that SWPCP revisions are necessary based on corrective action review, submit the revised pages of the SWPCP to DEQ or Agent, including a schedule for implementing the control measures. 1200-Z Permit Sch. A.10.a(i-iii).

Next, the permit registrant is required to summarize specific information in a “Tier I Report,” including (1) The results of its investigation into the cause of elevated pollutant levels; 2) Corrective actions taken or to be taken, or, if determined that no corrective action is necessary, the basis for this determination; and 3) A documentation of whether SWPCP revisions are

necessary. *Id.* Sch. A.10.a.iv. This Tier I report must be kept on site, with a copy provided to DEQ or agent upon request. If there is an exceedance of a reference concentration for any relevant impairment pollutant, the report must be submitted to DEQ or agent no later than 60 calendar days after receiving the monitoring results. *Id.* Sch. A.10.a.v. All identified corrective actions must be implemented before the next storm event, if possible, or no later than 30 calendar days after receiving the monitoring results, whichever comes first. *Id.* Sch. A.10.b.

CMS has violated and is violating these Tier 1 Corrective Action requirements. First, CMS has failed to submit Tier 1 Reports to BES within 60 days of each benchmark exceedance for the impairment pollutant iron. CMS reported monitoring results from February 11, 2019 showing an iron concentration of 13.5 mg/L—well above the 1.0 mg/L benchmark (as well as benchmark exceedances for total suspended solids, copper, zinc, *e. coli*, and phosphorous). NEDC searched for, but was not able to locate, a Tier 1 Report on file at BES for those monitoring results, in violation of 1200-Z Permit Schedule A.10.

Furthermore, the Tier 1 Reports CMS *has* submitted do not comply with Current Permit requirements. Since obtaining Current Permit coverage, CMS submitted a Tier 1 Report on May 3, 2018 (Sample date 3/13/18); January 22, 2019 (Sample dates 11/28/18 and 12/18/18); and May 7, 2019 (Sample date 4/11/2019). Each of these Tier 1 Reports speculate as to the same or similar causes for the relevant exceedances. For example, all three reports mention “infiltration from a deteriorating pipe [having] the potential to impact sampling results,” “galvanized cages used to house IBCs” as a possible contributor to zinc exceedances, and “ground down gravel in the lot” as a contributor to total suspended solids exceedances. Further, both the January 22, 2019 Report and May 7, 2019 Report identify “rusting metals” that have been stored outside as a contributor to various exceedances. The similarities between these identified causes from one Report to the next, over a span of 13 months, along with continued benchmark exceedances following submittal of each report, indicate that for each Report CMS has failed to undertake the requisite detailed investigation into the cause of the elevated pollutant levels, in violation of 1200-Z Permit Sch. A.10.a.i and A.10.a.iv.(1).

These cursory Tier 1 Reports also contain similar and insufficient corrective actions to address benchmark exceedances, in violation of 1200-Z Permit Schedule A.10.a.iv. For example, the May 3, 2018 Report identifies “Straw waddle [sic] placed around the base of the ODOT discharge pipe” as the only measure to address exceedances for total suspended solids, zinc, and phosphorous. This is not a corrective action, as placement of straw wattles in the West Pond is a pre-existing required control measure pursuant to Section A.7.b.vi of the Permit. *See* CMS SWPCP p.12.

The January 22, 2019 Report “Action Plan” similarly identifies replacement of straw wattles to “help block incoming TSS,” along with placement of absorbent booms in certain areas, and cleaning and replacement of a parking lot catch basin filter. These too are pre-existing Permit requirements and not corrective actions. *See* 1200-Z Permit Sch. A.1.e. (employing booms for debris control); Sch. A.1.i. (cleaning and maintaining catch basins as preventative maintenance “to ensure effective operation as designed and in a manner that prevents the discharge of pollution.”).

The May 7, 2019 Report "Action Plan" also identifies straw wattle replacement and catch basin filter replacement as measures to address benchmark exceedances. In addition, that Report mentions an "ongoing discussion with landlord" about other projects, with no further dates, information, or explanation of how this discussion or any new projects would address the exceedances. The Report also mentions the "potential to investigate incoming contamination from adjacent lots to see specific pollution contributions," without a specified date, and various housekeeping measures such as cleaning and inspections that are already required under the Permit and SWPCP. Finally, CMS states that metals left outside "have been moved to a covered area in the yard to ensure as minimal contamination as possible." This too is not a corrective action, as Schedule A.1.a.i of the 1200-Z Permit requires that these materials be stored indoors as a technology based effluent limit. CMS's failure to provide adequate corrective measures in these three Tier 1 Reports violates 1200-Z Permit Schedule A.10.a.iv. Further, it demonstrates that CMS has failed to adequately review the SWPCP and the selection, design, installation and implementation of control measures to ensure compliance with the permit, in violation of 1200-Z Permit Schedule A.10.a.ii.

Finally, CMS has failed to submit revised pages of its SWPCP to BES incorporating additional control measures or other changes identified in its Tier 1 Reports, in violation of Current Permit Schedule A.10.iii.

III. PERSONS GIVING NOTICE

The full name, address, and telephone number of the party giving notice is:

Northwest Environmental Defense Center
10015 S.W. Terwilliger Boulevard
Portland, OR 97219
(503) 768-6726

However, we request that you contact NEDC only through its undersigned attorneys, whose contact information is as follows:

James N. Saul
Earthrise Law Center
10015 SW Terwilliger Blvd.
Portland, OR 97219
Tel: (503) 768-6929

Jonah Sandford
Northwest Environmental Defense Center
10015 SW Terwilliger Blvd.
Portland, OR 97219
Tel: (503) 768-6726

IV. CONCLUSION

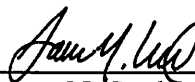
The permit violations described and alleged in this notice of intent to sue are ongoing and violate the Clean Water Act. At the conclusion of the 60-day notice period, NEDC intends to file a lawsuit against CMS under the citizen suit provisions of Section 505 of the Clean Water Act, 33 U.S.C. § 1365. Each of the above-described violations that occurred before November 2, 2015 subjects the violator to a penalty of up to \$37,500 per day, and each above-described violation that occurred after November 2, 2015 subjects the violator to a penalty of up to \$54,833. *See* 40 C.F.R. § 19.4. In addition to civil penalties, NEDC will seek injunctive relief to prevent further violations and such other relief as is permitted by law, including recovery of NEDC's costs, attorneys' fees, and expert witness fees. *See* 33 U.S.C. §§ 1365(a) and (d). Although the above-described violations reflect the information currently available to NEDC, NEDC intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice letter.

During the 60-day notice period NEDC will be willing to discuss effective remedies for the violations described in this letter. If you wish to pursue settlement discussions in the absence of litigation, we suggest that you initiate discussions within 10 days of receiving this notice so the parties can meet and discuss effective remedies for the violations alleged herein. NEDC does not intend to delay the filing of a complaint if discussions are ongoing when the notice period ends.

Sincerely,



Jonah Sandford
Northwest Environmental Defense Center



James N. Saul
Earthrise Law Center

Attorneys for Northwest Environmental Defense Center

Copies sent via Certified U.S. Mail to:

Director Richard Whitman
Oregon Department of Environmental Quality
700 NE Multnomah St., Suite 600
Portland, OR 97232

Administrator Andrew Wheeler
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Regional Administrator Chris Hladick
U.S. EPA, Region 10
Mail Code 21-B03
1200 Sixth Avenue
Seattle, WA 98101

Registered Agent
Container Management Services, LLC
c/o CT Corporation System
780 Commercial Street, SE, Suite 100
Salem, OR 97301